these amounts to $205,760 and the second comes to $160,380 and to these I would add the agreed figure of $4,000 in respect of improvements, making a total of $370,140.

I express no opinion regarding costs at this stage.

Ong Hock Thye Ag.C.J. (Malaya): I have read the judgment of Suffian J., with which I am in entire agreement. I had made my own independent assessment of the market value of the two lots from the point of view of the potential property-developer and I do not think that any realistic appraisement will justify any higher price than $8,000 per acre for the first lot and $9,000 per acre for the second, which is the award of Suffian J.

As to costs, the respondents having succeeded at Kuching in obtaining an appreciable enhancement of the compensation originally awarded by the superintendent, my view is that there should be no costs for either party in the court below, but that the appellants do have their costs of this appeal.

Order accordingly.

HO MING SIANG v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Ong Hock Thye F.J.) January 27, 1966]

[K.L. — Federal Court Criminal Appeal No. X19 of 1965]

Internal Security — Consorting with members of Indonesian armed forces — Possession of firearm and ammunition — Defence of alibi — Admissibility of statement — Internal Security Act, 1960.

Criminal Law and Procedure — Charge — Date — Mistake — Not essential part of offence.

This was an appeal against a conviction on charges of consorting with members of the Indonesian armed forces, possession of a firearm and possession of ammunnition, offences under the Internal Security Act, 1960. The defence of the appellant at the trial was an *alibi* and he maintained that the statement alleged to be recorded from him was concocted by the police officers. The trial judge accepted the evidence of the Indonesian prisoners of war and held that this evidence was corroborated by the recorded statement of the appellant which he admitted in evidence.

Held: the learned trial judge in this case was correct in holding that the statement was freely and voluntarily given under proper caution and in rejecting the defence allegation that the statement was fabricated by the police.

Cases referred to:—

(1) *Law Kiat Lang* v. *Public Prosecutor* [1966] 1 M.L.J. 215, F.C.

(2) *R.* v. *Severo Dossi* (1918), 13 Cr.App.R. 158, 159.

FEDERAL COURT.

Lim Kean Siew for the appellant.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This is yet another appeal arising out of the Indonesian invasion near Labis during the night of 1st/2nd September, 1964. The appellant was thought to have participated in that invasion and in consequence he was prosecuted on the following three charges under the Internal Security Act, 1960:—

"*1st Charge*: That you between 2.00 a.m. on the 2nd day of September and 6.00 a.m. on the 11th day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong *vide* FLN. 245 of 17th August, 1964, namely Tenang Kampong, Labis, in the district of Segamat, in the State of Johore, consorted with members of the Indonesian armed forces who carried firearms and ammunitions in contravention of the provisions of section 57(1) of the Internal Security Act, 1960, in circumstances which raised a reasonable presumption that you intended to act with such members of the said Indonesian armed forces in a manner prejudicial to public security and that you have thereby committed an offence punishable under section 58(1) of the said Act.

2nd Charge: That you at about 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong *vide* FLN. 245 of 17th August, 1964, namely Tenang Kampong, Labis, in the district of Segamat, in the State of Johore, without lawful excuse carried a firearm, to wit, a LEE ENFIELD RIFLE, without lawful authority and that you have thereby committed an offence punishable under section 57 (1)(a) of the Internal Security Act, 1960.

3rd Charge: That you at about 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong *vide* FLN. 245 of 17th August, 1964, namely Tenang Kampong, Labis, in the district of Segamat, in the State of Johore, without lawful excuse had in your possession 200 rounds of ammunition without lawful authority and that you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960."

With regard to the first of these charges, the dates are wrong and the charge was at no time amended but, as was pointed out in *Law Kiat Lang* v. *Public Prosecutor* (1) this is without importance. As was said by Atkin J. in the case of *Severo Dossi*:—(2)

"From time immemorial a date specified in an indictment has never been a material matter unless it is actually an essential part of the alleged offence."

The appellant was convicted on all three charges and sentenced to death. Against these convictions he has now appealed.

The appellant was arrested on 13th September, 1964, at Taiping, some 300 miles north of Labis and his trial commenced on 5th September, 1965.

The prosecution case was based on the evidence of three Indonesian prisoners of war and a statement alleged to have been made voluntarily by the appellant to the police at Labis on 22nd September, 1964.

Sutikno Tjetrosumarto said he was a Lieutenant in the Indonesian Air Force and was at present a prisoner of war. He joined the army in 1945 and in 1950 was transferred to the air force in which he became a company commander. In February, 1964, his company was in training for "confrontation" against Malaysia, and in July he was transferred to the island of Karimun to train Chinese who had come from Malaysia in the use of firearms and explosives for a campaign the purposes of which were to come to Malaysia to "liberate" the people and, by such acts of sabotage as blowing up roads and bridges, to disrupt the economy of the country.

On 1st September at Djakarta he mustered a party of 48 persons including 14 Chinese from Malaysia. They left by aircraft for Medan where they rested for a few hours. About midnight the aircraft left Medan and about 2 a.m. they dropped by parachute and landed in Johore; he did not know exactly where he had landed but next morning he looked at his map and found it was in the Tenang area. They were all in uniform and each of them carried food, clothing, medicine, $300 in Malaysian currency, a firearm, two handgrenades and at least 200 rounds of ammunition. As regards firearms, the Indonesians had light automatic weapons and the Chinese Lee Enfield rifles or sten guns. The appellant was one of the Chinese in the party but the witness did not say with what type of weapon he was armed. Another member of the party was a Chinese girl named Salina.

After leaving the aircraft the witness did not see any of his men until after he was captured about 7.30 p.m. on 21st September, 1964. He did not see the appellant again till he saw him in the lock-up at Muar on 4th September, 1965.

Seman bin Pawiro said he was an Indonesian soldier and was one of Lieutenant Sutikno's party who left Djakarta and later Medan by air and landed by parachute in Malaysia in the early morning of 2nd September, 1964. The appellant was also one of the party; he was in uniform and sat next to the witness in the aircraft; his number was 21 and that of the witness was 20. The witness did not know if all the party were carrying arms and ammunition but they were all carrying bundles; in particular he did not know what the appellant was carrying. After he jumped he did not know where he landed but 5 days later he was arrested near Labis.

Bakir bin Akir said he also was an Indonesian soldier and one of Lieutenant Sutikno's party. The appellant was also one of the party. All of them were in uniform and were carrying firearms, ammunition and handgrenades. The witness did not, however, state specifically what the appellant was carrying. After he jumped from the aircraft he wandered about in the jungle and was later captured.

Then there was a statement made by the appellant to the police on 22nd September, 1964, which was admitted in evidence under section 75 (1) of the Internal Security Act. The circumstances in which that statement was made will call for examination later. Its contents, however, were as follows.

In May, 1964, the appellant was told by a friend he was going to take him for a visit and he was taken to Pantai Remas in Perak. From there he was taken in an Indonesian boat with 17 other Chinese (whose names he gave) to an island he knew as Balai where they were given physical training under an Indonesian instructor. After a week they were taken to Bandoeng where they were given training in the use of weapons and in parachute jumping. He was there issued with a Lee Enfield rifle of 7.62 calibre but no ammunition. He was given the number 14 and though he could not remember the number of his rifle the number 14 was stamped on the sling. Among the Chinese with him at this stage were 10 persons now detained in this country whom he named.

The training at Bandoeng lasted three months and then the trainees were taken to Djakarta where they were asked to join some Indonesians in paratroop uniforms. The appellant was attached to section 4 of platoon 3. There were six persons in this section, one of whom was a Malaysian girl, whom he knew as Salina. The platoon commander was an Indonesian sergeant whom he knew as "Pa Yet". He still had his rifle and he was now issued with 200 rounds of ammunition. He was also issued with a paratrooper's uniform, civilian clothing, a compass, a whistle and toilet articles.

On 1st September, 1964, about noon, the party were taken to an aircraft which left at 3 p.m. for a place he did not know. It waited there for an hour and left again about 11 p.m.

About 2 a.m. they received the signal to jump. His number was 21 and he was among the last four to jump. His parachute caught in a tree and he lost his rifle and had to use a rope to get to the ground. He waited where he was till he could see and he then walked on a compass bearing till about 3 p.m. when he met an Indonesian paratrooper he knew as Man. Next morning they met two other Indonesian paratroopers. They remained in the jungle till 10th September. Their rations were then exhausted and the others sent him out, dressed in civilian clothes, to buy food. He found his way to a road and then travelled by bus and taxi to his home at Taiping using for the purpose the money he had been given by the others. He had been given $300 in the aircraft but had lost it.

In the course of the prosecution case the appellant gave evidence regarding this statement

which will be considered later. But at the close of the prosecution case he gave evidence on his own behalf setting up a defence of *alibi*.

He said that in May, 1964, he was in Taiping where he had been a candidate in an election for the State Legislative Assembly on 25th April. On 11th July he submitted his return of election expenses as required by law having sworn to it before a magistrate the previous day. After this election there was an election for the Town Council on 13th June. In this a friend of his, Lim Cheng Ho, was a candidate and he acted as his election agent. In connection with this election he swore to a return of Lim's election expenses on 15th August.

When he was not engaged in these political activities he was going about the country looking for work and visiting friends. He did not go to Indonesia at any time and he was forced and coached to make his statement to the police. Among other visits he made one was about two weeks before his arrest to one Chin Moy, the mother of a friend, Oh Chuan, near Kampar with whom he stayed for four or five days.

In support of his *alibi* he called five witnesses.

Lim Cheng Ho said that he had acted as election agent for the appellant in April 1964. He himself was a candidate at the Town Council election on 13th June, 1964, and the appellant acted as his agent. During the two elections they met often. He had frequently gone to the appellant's house to see him but at times the appellant was not there and was said to have gone in search of employment. He did not go to the police after the arrest of the appellant.

Ho Kwan Lian said she was the sister of the appellant and had helped him during the elections in 1964. Until June, 1964, the appellant was in Taiping. Between 13th June and 17th August he left Taiping on a number of occasions and sometimes stayed away for as long as two weeks but he always came back. She did not go to the police after her brother's arrest.

Teh Ah Yeok said that she saw the appellant in Taiping after the elections and before his arrest. She was present when he was arrested on 13th September.

Chin Moy said she resided at Kampong Tinah, Tanjong Tualang, and had a son Ho Chuan who was killed in an accident some time after the arrest of the appellant. The appellant came to see her on 27th August, 1964, and stayed for a week.

Finally, there was the evidence of Lee Kok Cheng, the Supervisor of Elections for the State of Perak. He was not in Perak in 1964 and did not know the appellant, but he produced two documents. One of these was a return of election expenses purporting to be filed on behalf of a candidate named Ho Min Siang. This embodied a verification on oath made before a magistrate on 10th July and purporting to be signed with the appellant's name "Ho Min Siang" in Roman characters.

The other document was a declaration of election expenses purporting to be filed on 17th August, 1964, on behalf of a candidate named Lim Cheng Ho whose election agent was named Ho Min Siang. This contained a verification on oath made before a magistrate by the election agent on 17th August, 1964, and purporting to be signed with the appellant's name "Ho Min Siang" in Chinese characters.

On that evidence as a whole the trial judge accepted the evidence of the Indonesian prisoners of war as true. He treated it as the evidence of accomplices and regarded it as in any event inadequate to support convictions for carrying arms and possession of ammunition. But he found corroboration of it and evidence which made out the prosecution case as a whole in the statement made to the police by the appellant shortly after his arrest which he had admitted as having been voluntarily made after the statutory caution under section 75 of the Internal Security Act had been administered. He regarded the defence evidence as not deserving of any consideration except so much of it as showed that a person who said his name was Ho Min Siang, but whose identity was not proved, had made declarations before a magistrate in Taiping on 10th July and 15th August, 1964.

Such of the grounds of appeal as merit consideration are connected in one way or another with the statement made by the appellant to the police at Johore Bahru on 22nd September, 1964, that is to say ten days after his arrest and a year prior to his trial. It will thus be necessary to consider the evidence as to the circumstances in which that statement was made.

Constable Shuaid said he arrested the appellant on the evening of 13th September and took him to the Taiping Police Station and informed his mother that her son had been arrested.

A.S.P. Rogers said that the following morning he saw the appellant at the Ipoh Police Station and interrogated him for intelligence purposes. He did not use any threat, promise or inducement at any time and found the appellant intelligent and co-operative. As far as he knew nobody but himself interrogated the appellant at Ipoh. On 17th September the appellant was sent to Johore Bahru.

Inspector Oh said that on 18th September the appellant arrived in Johore Bahru in custody from Ipoh. He questioned him for a few minutes, but did not use any threat, promise or inducement. The appellant was then put in the

lock-up under the witness's supervision where he was kept by himself in a cell but was visited by the witness twice daily and made no complaints. He was also seen by the doctor every morning. He was taken out of the cell on 22nd September because Inspector Anuar wished to obtain a statement from him.

Inspector Anuar said he saw the appellant on 22nd September at Johore Bahru and interviewed him through Chia Kong Sin as interpreter. He ascertained that the appellant wished to speak in Cantonese. Then he administered the caution prescribed by section 75 of the Internal Security Act. The appellant said he understood the caution and elected to make a statement. He then made a statement freely and voluntarily which was interpreted into English and written down by the witness. It was interpreted back to the appellant who adhered to it and said he did not wish to make any additions or alterations. No threat, inducement or promise was held out to the appellant. In cross-examination the witness admitted he knew the appellant had been interrogated for intelligence purposes and that he had seen statements made by the Indonesian witnesses Seman and Bakir but not by Lieutenant Sutikno who had been captured the previous evening.

Similar evidence was given by the interpreter Chia and it is to be observed that no suggestion of any sort of inducement being held out at the interview was put either to this witness or to Inspector Anuar.

At this stage the appellant gave evidence. He was arrested on 13th September at Taiping and was taken to his house which was searched He was then taken to Ipoh where he arrived about midnight. Next day between 1 and 4 p.m. he was interrogated by A.S.P. Rogers. He was pushed into a room and five or six people took off his clothes and gave him prison trousers. He was shown two books of photographs and asked if he knew any of the persons in the photographs. He did not recognise any of the photographs and the men with him then struck him with their fists on both sides of the abdomen and told him that if he did not tell them what they wanted they would continue beating him, but that if he said what they taught him to say he would not be beaten again. At first he could not remember what they taught him but they kept on repeating it to him until he understood. They then stopped beating him and told him that if he did not follow what they had taught him they would beat him to death or shoot him. That night he had no sleep.

The following day he was questioned again but was not beaten. He was taken to Johore Bahru on 17th or 18th September where he was questioned by Inspector Oh and then kept in a cell for 4 days without seeing anyone. On 22nd September a statement was taken from him by Inspector Anuar with the assistance of Chia. They did not ask him whether he wanted to make a statement. They told him they had come to take a statement from him and that if he made it he would be released to see his parents. He also had in mind from his previous experience that if he did not make a statement he would be beaten again or shot. He did not actually make a statement but he was asked a series of questions putting certain facts to him and to these questions he was required to answer "yes" or "no". While he was in prison he was seen regularly by the doctor and complained to him of severe pain in the abdomen as a result of being beaten.

The trial judge did not accept the appellant's evidence as to the circumstances surrounding the taking of his statement. He found as a fact that the statement was freely and voluntarily made after the proper caution had been administered to the appellant and he did not accept it that the appellant had been assaulted or threatened at any time. In so far as these findings were based on the judge's estimate of the credibility of witnesses they would, of course, have been difficult if not impossible to attack in this court.

The admission of the statement has, however, been attacked on the ground that the judge did not consider the possible effect on the mind of the appellant of being kept in what was virtually solitary confinement in the Johore police station for a period of four days. This, it was argued, constituted some sort of psychological pressure upon him which in itself must have made the making of the statement less than fully voluntary.

In our view this complaint is without substance. The appellant was arrested on 13th September and it was on 22nd September that he made his statement. From 13th till 17th September he was detained at Ipoh where he was questioned for intelligence purposes. He made allegations of being assaulted and threatened while he was there but on the evidence the trial judge did not accept these allegations. Then he was taken to Johore, some 350 miles away and was in custody there for four days.

During that time there is no suggestion that he was threatened or physically molested in any way. Indeed there is no suggestion that his treatment differed in any way from that of any other prisoner held in custody on a serious charge. He was kept in a cell in the police lock-up and was only let out for necessary purposes and for exercise; he was allowed no communication with anybody except his guards, though it is to be noted that there was no evidence that his mother, who knew he had been arrested,

or anybody else expressed any wish to communicate with him. But the statutory caution was properly given to him and in our view that was sufficient in the circumstances to make it clear to him that he was under no obligation to make any statement unless he wished to do so. Whether or not ignorance of the police case against him and a period of reflection had in fact made him wish to make a statement when afforded the opportunity to do so is entirely a matter of speculation. But even so it cannot be said that what he did was not done voluntarily.

I now come to the main ground of appeal which was to the effect that even if on the evidence before him at the time he admitted the statement the judge was right in doing so yet at the end of the case he should have taken the evidence for the defence into account and rejected it as being the result of pressure and coaching on the part of the police, and moreover should have treated the fact that the police found it necessary to fabricate such evidence as adding such additional weight to the defence of *alibi* as to cast fatal doubt on the case for the prosecution as a whole.

Such superficial attractiveness as this piece of forensic dialectic may possess has been enhanced by the skill and persuasiveness with which it has been urged upon us. It will not, however, withstand close examination.

First of all, viewing the argument in isolation, it is necessary to consider just what it involves. It necessarily involves the proposition that the statement as written down by Inspector Anuar was from beginning to end a complete concoction by the police. The appellant was an innocent man who at all material times had been going about his lawful occupation in this country In Ipoh he was told that he was expected to tell a detailed story which was lies from beginning to end emanating from the evil minds of police officers of how he had gone to Indonesia and then participated in the Labis invasion and then in Johore he was asked a series of questions embodying that false story to which he was required to answer "yes" or "no".

Now this may be possible in the sense that all things are possible but it is in the highest degree improbable. There have been from time to time unfortunate incidents where police officers have been tempted to "touch up" individual pieces of evidence to strengthen a case against a man they believe to be guilty. But to concoct a story which is from beginning to end a mass of falsehoods to implicate an innocent man in a series of capital offences is a very different thing.

That, perhaps, is putting an unduly unfavourable construction on what the police are supposed to have done. There is not a scrap of evidence to suggest that any individual police officer had the slightest personal ground for bearing any malice towards the appellant personally and the allegation may be considered on the basis that the intention was not to secure the conviction of an innocent man but to assist in the conviction of a man the police believed to be guilty. But even on this basis the allegation is in the highest degree improbable.

For one thing, from the point of view of the police officers concerned, it was an extremely dangerous thing to do. It was not the doing of a single officer. At least four named officers were involved — A.S.P. Rogers, Inspector Oh, Inspector Anuar and the interpreter Chia — and there were others alleged to have assisted A.S.P. Rogers whom the appellant did not name. With so many persons involved the risks of detection were very great and the consequences of detection would have been calamitous. Moreover the appellant by reason of his political activities must have been well-known in the Taiping area and if he had in fact not been absent in Indonesia from his usual sphere of activities for a period of some three months he would have been in a position to set up such an overwhelming *alibi* that detection of the fabrication would have been virtually inevitable.

Again, looked at from the point of view of the personality of the appellant the whole thing is incredible. He is not an ignorant youth, he is a politician of sufficient standing to be able to stand as a candidate for a State election. And yet he allows himself to be led, as it were, as a lamb to the slaughter. He has not even alleged that he made any attempt whatsoever to protest his innocence or to say a single word until his trial a year later of what was, if it was true, an invincible defence capable of being proved up to the hilt.

Apart, however, from considerations of inherent improbability there are ample grounds for saying that the appellant's allegations were effectively dispersed by the evidence.

In the first place A.S.P. Rogers, Inspector Oh, Inspector Anuar, and the interpreter Chia all gave evidence at the trial which has been recounted and in which they denied the appellant's story. The judge believed them and he did not believe the appellant. Again he did not believe the witnesses who spoke to the appellant's *alibi* with the exception of the Supervisor of Elections and his evidence came to no more than this: that on 10th July an unidentified person appeared before a magistrate and signed a paper with the name of the appellant in Roman characters and on 17th August an unidentified person appeared before the same magistrate and signed a similar form with the name of the appellant in Chinese characters.

In all the circumstances we are of the opinion that this ground of appeal also is without substance.

The appeals are dismissed.

Appeals dismissed.

Solicitors: *Lim Kean Siew & Co.*

MUNIANDY & ORS. v. PUBLIC PROSECUTOR

[F.C. (Barakbah C.J. (Malaya), Pike C.J. (Borneo) and Ong Hock Thye F.J.) February 1, 1966]

[K.L. — Federal Court Criminal Appeal No. X17 of 1965]

Criminal Law and Procedure — Trial — Appeal — Circumstances where Appeal Court can differ from trial judge on questions of fact — Assessment of evidence.

Penal Code, s. 326 — Voluntarily causing grievous hurt — Evidence and fact.

The appellants had been found guilty of voluntarily causing grievous hurt. The learned trial judge accepted the evidence of the prosecution witnesses that there was an unprovoked attack on the complainant by the appellants and rejected that of the defence that there was a general affray. He gave as his ground for so doing that the prosecution witnesses were unshaken in cross-examination.

Held: (1) the fact of being unshaken in cross-examination was not *per se* an all-sufficient acid test of credibility; the inherent probability or improbability of a fact in issue must be the prime consideration;

(2) in view of the fact that the defence story in this case was consistent with the facts of the injuries, while that of the prosecution was not, it was open to the court to differ from the trial judge on the assessment of the evidence and the facts and in the circumstances the convictions of the appellants must be set aside.

Case referred to:—

(1) *Yuill* v. *Yuill* [1945] P. 15, 19.

FEDERAL COURT.

K. Rajanayagam for the appellant.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: The first appellant was convicted of the offence of voluntarily causing grievous hurt to one Nagarachnam (f) by means of an axe, contrary to section 326 of the Penal Code, and was sentenced to imprisonment for 3 years. He was further charged, together with the second appellant, under sections 109 and 326 of the Penal Code for abetment of another similar offence, committed by the third appellant and upon conviction they each received a sentence of 18 months imprisonment. The third appellant was convicted, under section 326, of voluntarily causing grievous hurt to Ramasamy, husband of Nagarachnam, by means of an iron rod and was sentenced to 6 years imprisonment.

All the appellants were rubber-tappers; the first appellant is a son of the third appellant and the second appellant was their next-door neighbour. None of them had any previous convictions. The two injured persons, the appellants and all the alleged eye-witnesses lived in the labour lines of Jugra Estate. Ramasamy was a commitee member of the workers union. Most of the other eye-witnesses were officers of the union or their relatives and friends.

On August 13, 1964, the day before the events that led to the prosecution, Muniandy (P.W.7), Pandurengan (P.W.10) and Ramasamy (P.W.3) had made a complaint of black magic against the first appellant to Joseph Mamen (D.W.8) the estate contractor who was an independent witness. Muniandy told Mamen that unless he could put an end to such black magic there would be a fight. Three hours later, at 5 p.m., the first appellant with two others complained to Mamen that they had been waylaid and threatened. Mamen's evidence stood uncontradicted.

There were two conflicting versions of what happened at about 8 a.m. the next morning, August 14, 1964. According to all the material prosecution witnesses there was only a wordy quarrel between a female named Thanapakiam and the family of the first and third appellants, which was followed by an unprovoked attack, first, on Nagarachnam by the first appellant with an axe, and then, on Ramasamy with an iron rod. The other version, by the defence, was that there was a general affray involving many more people than were said to have been active participants in the prosecution story of the incident. In fact eight persons were injured, namely, the complainants Nagarachnam and Ramasamy, Pavadai (the third appellant), Letchumi (his wife), Ponnamah, Mariayee, Muniandy (the first appellant), Muniandy s/o Rajoo (P.W.7) and Rajagopal s/o Muniandy (Pavadai). If the prosecution witnesses were telling the unadulterated truth, there was no accounting for the injuries of at least half the number of injured persons. The learned judge, it is true, said:

> "I was satisfied that the third accused was not injured before P.W.2 and P.W.3 (that is Nagarachnam and Ramasamy) had received their injuries. There were indications from the evidence that the fight continued. It was not for me to decide who hit the third accused, but if anybody hit him at all, it must have been P.W.7 who was hardly likely to admit anything that was going to incriminate him. P.W.3, in my opinion, assaulted no one....."

In our view this opinion failed entirely to take into account the evidence given by the defence which explained the injuries of each and every one of the eight persons named. It seems to us, therefore, that the defence story was at least consistent with the facts, whereas that of the prosecution plainly was not. Where there